

109TH CONGRESS  
1ST SESSION

# H. R. 1643

To amend various banking laws to combat predatory lending, particularly in regards to low and moderate income individuals, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 14, 2005

Mr. FORD introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend various banking laws to combat predatory lending, particularly in regards to low and moderate income individuals, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Borrower’s Bill of  
5       Rights Act”.

1 **SEC. 2. ASSISTANT SECRETARY OF THE TREASURY FOR FI-**  
2 **NANCIAL EDUCATION.**

3 Section 301(e) of title 31, United States Code, is  
4 amended—

5 (1) by striking “7 Assistant Secretaries” and  
6 inserting “8 Assistant Secretaries”; and

7 (2) by inserting after the 2nd sentence the fol-  
8 lowing new sentence: “One of the Assistant Secre-  
9 taries shall be the Assistant Secretary for Financial  
10 Education.”

11 **SEC. 3. FINANCIAL LITERACY FOR MIDDLE AND HIGH**  
12 **SCHOOL STUDENTS.**

13 The Financial Literacy and Education Improvement  
14 Act (20 U.S.C. 9701, et seq.) is amended—

15 (1) by redesignating section 519 as section 520;  
16 and

17 (2) by inserting after section 518 the following  
18 new section:

19 **“SEC. 519. FINANCIAL LITERACY FOR MIDDLE AND HIGH**  
20 **SCHOOL STUDENTS.**

21 “(a) PILOT PROGRAM.—The Assistant Secretary for  
22 Financial Education (hereafter in this section referred to  
23 as the ‘Assistant Secretary’ shall establish a 2-year pilot  
24 financial literacy pilot program for middle and high school  
25 students.

1       “(b) REQUIREMENTS.—The pilot program estab-  
2       lished by the Assistant Secretary shall comply with the  
3       following requirements:

4               “(1) The pilot program shall be implemented in  
5       10 middle schools and 10 high schools, selected by  
6       the Assistant Secretary based on such criteria as the  
7       Assistant Secretary may determine to be appro-  
8       priate, in 10 different school systems and provided  
9       to 8th grade students at the middle schools selected  
10      and 12th grade students at the high schools selected.

11              “(2) The program shall use as guidance the fi-  
12      nancial education program in the secondary schools  
13      of the State of Delaware called the ‘Keys to Finan-  
14      cial Success’.

15              “(3) The program shall be funded by the Sec-  
16      retary of the Treasury, out of funds appropriated to  
17      the Secretary, and administered by the State and  
18      the local school administration of each school se-  
19      lected, based on criteria established by the Assistant  
20      Secretary, including an annual update of the mate-  
21      rials used in the curriculum.

22              “(c) REPORT.—Upon the completion of the 2-year  
23      pilot program, the Assistant Secretary shall submit to the  
24      Secretary of the Treasury and the Congress a report con-  
25      taining a detailed description of the findings and conclu-

1 sions of the Assistant Secretary with respect to the pilot  
2 program.”.

3 **SEC. 4. “PLAIN LANGUAGE” DISCLOSURES.**

4 Section 122 of the Truth in Lending Act (15 U.S.C.  
5 1632) is amended by adding at the end the following new  
6 subsection:

7 “(d) PLAIN AND SIMPLE LANGUAGE DISCLOSURES  
8 REQUIRED FOR ALL DISCLOSURES.—The Board shall  
9 take such action as may be necessary to ensure that all  
10 disclosures that are required to be provided under this title  
11 with respect to any consumer credit transaction, including  
12 all the disclosures required under section 129, shall be  
13 simple and easy to understand and in a language under-  
14 stood by the consumer.”.

15 **SEC. 5. LIMITATION ON USURIOUS INTEREST RATES AND**  
16 **UNFAIR PRACTICES.**

17 (a) REPEAL OF PREEMPTION OF STATE MORTGAGE  
18 USURY LAWS.—

19 (1) IN GENERAL.—Sections 501, 511, 512, 525,  
20 526, 527, 528, and 529 of the Depository Institu-  
21 tions Deregulation and Monetary Control Act of  
22 1980 are hereby repealed.

23 (2) TECHNICAL AND CONFORMING AMEND-  
24 MENTS.—

1 (A) INSURED DEPOSITORY INSTITU-  
2 TIONS.—Section 27 of the Federal Deposit In-  
3 surance Act (12 U.S.C. 1831d) is amended to  
4 read as follows:

5 **“SEC. 27. UNIFORM APPLICABILITY OF STATE LAW.**

6 “In order to prevent discrimination against State-  
7 chartered insured depository institutions, including in-  
8 sured savings banks and insured branches of foreign  
9 banks and notwithstanding any other provision of Federal  
10 law, the provision of the constitution or the laws of any  
11 State expressly limiting the rate or amount of interest,  
12 discount points, finance charges, or other charges which  
13 may be charged, taken, received, or reserved shall apply  
14 to all depository institutions that are located in, have any  
15 branch in, or do business in such State with respect to  
16 customers of any such institution which reside in or are  
17 located in such State.”.

18 (B) INSURED CREDIT UNIONS.—Section  
19 205(g) of the Federal Credit Union Act (12  
20 U.S.C. 1785(g)) is amended to read as follows:

21 “(g) UNIFORM APPLICABILITY OF STATE LAW.—In  
22 order to prevent discrimination against State-chartered in-  
23 sured credit unions and notwithstanding any other provi-  
24 sion of Federal law, the provision of the constitution or  
25 the laws of any State expressly limiting the rate or amount

1 of interest, discount points, finance charges, or other  
 2 charges which may be charged, taken, received, or re-  
 3 served shall apply to all credit unions that are located in,  
 4 have any branch in, or do business in such State with re-  
 5 spect to customers of any such credit union which reside  
 6 in or are located in such State.”.

7 (b) PROHIBITION ON LOAN “FLIPPING” AND MAN-  
 8 DATORY ARBITRATION.—

9 (1) IN GENERAL.—Chapter 2 of the Truth in  
 10 Lending Act (15 U.S.C. 1631 et seq.) is amended by  
 11 inserting after section 129 the following new section:

12 **“§ 129A. Protections for all loans**

13 “(a) FLIPPING.—

14 “(1) IN GENERAL.—No creditor may knowingly  
 15 or intentionally engage in the unfair act or practice  
 16 of flipping.

17 “(2) FLIPPING DEFINED.—For purposes of this  
 18 subsection, the term ‘flipping’ means the making of  
 19 a loan or extension of credit to a consumer which re-  
 20 finances an existing loan or other extension of credit  
 21 when the new loan or extension of credit does not  
 22 have reasonable, tangible net benefit to the con-  
 23 sumer considering all of the circumstances, including  
 24 the terms of both the new and the refinanced loans

1 or credit, the cost of the new loan or credit, and the  
2 consumer's circumstances.

3 “(3) TANGIBLE NET BENEFIT.—The Board  
4 may prescribe regulations, in the discretion of the  
5 Board, defining the term ‘tangible net benefit’ for  
6 purposes of this subsection.

7 “(b) ARBITRATION.—

8 “(1) IN GENERAL.—A loan or other extension  
9 of credit subject to this title may not include terms  
10 which require arbitration or any other nonjudicial  
11 procedure as the method for resolving any con-  
12 troversy or settling any claims arising out of the  
13 transaction.

14 “(2) POST-CONTROVERSY AGREEMENTS.—Sub-  
15 ject to paragraph (3), paragraph (1) shall not be  
16 construed as limiting the right of the consumer and  
17 the creditor to agree to arbitration or any other non-  
18 judicial procedure as the method for resolving any  
19 controversy at any time after a dispute or claim  
20 under the transaction arises.

21 “(3) NO WAIVER OF STATUTORY CAUSE OF AC-  
22 TION.—No provision of any loan or other extension  
23 of credit or any agreement between the consumer  
24 and the creditor shall be applied or interpreted so as  
25 to bar a consumer from bringing an action in an ap-

1       appropriate district court of the United States, or any  
 2       other court of competent jurisdiction, pursuant to  
 3       section 130 or any other provision of law, for dam-  
 4       ages or other relief in connection with any alleged  
 5       violation of this section, any other provision of this  
 6       title, or any other Federal law.”.

7               (2) CLERICAL AMENDMENT.—The table of sec-  
 8       tions for chapter 2 of the Truth in Lending Act is  
 9       amended by inserting after the item relating to sec-  
 10      tion 129 the following new item:

“129A. Protections for all loans.”.

11              (3) REGULATIONS.—The Board of Governors of  
 12      the Federal Reserve System shall publish regulations  
 13      implementing the amendments made by this section  
 14      in final form before the end of the 6-month period  
 15      beginning on the date of enactment of this Act.

16              (c) AMENDMENT TO DEFINITION OF HIGH COST  
 17      MORTGAGES.—Subparagraph (A) of section 103(aa)(1) of  
 18      the Truth in Lending Act (15 U.S.C. 1602(aa)(1)(A)) is  
 19      amended by striking “10 percentage points” and inserting  
 20      “8 percentage points”.

21              (d) PRE-LOAN COUNSELING REQUIRED FOR HIGH  
 22      COST MORTGAGES.—Section 129 of the Truth in Lending  
 23      Act (15 U.S.C. 1639) is amended by inserting after sub-  
 24      section (l) the following new subsection:

25              “(m) PRE-LOAN COUNSELING.—



1           “(1) IN GENERAL.—A creditor may not extend  
2           credit to a consumer under a mortgage referred to  
3           in section 103(aa) without first receiving certifi-  
4           cation from a counselor that is approved by the Sec-  
5           retary of Housing and Urban Development, that the  
6           consumer has received—

7                   “(A) and successfully completed coun-  
8                   seling, in person or by telephone, on the advis-  
9                   ability of the loan transaction; and

10                   “(B) a general range of interest rates that  
11                   the applicant qualifies for given their credit  
12                   score.

13           “(2) NONAFFILIATION RULE FOR COUN-  
14           SELORS.—A counselor providing a certification to a  
15           creditor under paragraph (1) may not be employed  
16           by the creditor or an affiliate of the creditor or be  
17           affiliated with the creditor in any other manner (in-  
18           cluding any referral agreement).

19           “(3) DISCLOSURES REQUIRED PRIOR TO COUN-  
20           SELING.—No counselor may certify that a borrower  
21           has received counseling on the advisability of the  
22           loan transaction unless the counselor can verify that  
23           the consumer has received each statement required  
24           (in connection with such loan) by this section, or by

1 the Real Estate Settlement Procedures Act of 1974,  
2 with respect to the transaction.

3 “(4) REGULATIONS.—The Secretary of Housing  
4 and Urban Development may prescribe such regula-  
5 tions as the Secretary determines to be appropriate  
6 to carry out the requirements of paragraph (1).”.

7 **SEC. 6. LIMITATION ON ROLLOVERS OF PAYDAY LOANS.**

8 Section 128 of the Truth in Lending Act (15 U.S.C.  
9 1638) is amended by adding at the end the following new  
10 subsection:

11 “(e) LIMITATIONS ON ROLLOVERS OR REFINANCING  
12 OF PAYDAY LOANS WITH THE SAME CREDITOR.—

13 “(1) IN GENERAL.—A payday lender—

14 “(A) may not refinance or roll over any  
15 payday loan made by such lender, or any affil-  
16 iate or other associate of the payday lender, to  
17 any consumer with another payday loan more  
18 than 3 times; and

19 “(B) shall provide a consumer who seeks  
20 to refinance or roll over any payday loan made  
21 by such lender, or any affiliate or other asso-  
22 ciate of the payday lender, to the consumer  
23 with another payday loan more than 2 times  
24 with a disclosure notice, which the Board shall  
25 prescribe by regulation, regarding the hazards

1 of payday lending and the benefits of banking  
2 traditionally, in prominent format and type-size,  
3 that is separate from the disclosures required  
4 under subsection (a) with regard to such exten-  
5 sion of credit.

6 “(2) DEFINITIONS.—

7 “(A) CHECK.—The term ‘check’ means  
8 any negotiable demand draft drawn on or pay-  
9 able through an office of a depository institu-  
10 tion (as defined in section 19(b)(1)(A) of the  
11 Federal Reserve Act) located in any State.

12 “(B) PAYDAY LENDER.—The term ‘payday  
13 lender’ means any person who extends credit to  
14 any other person through a payday loan.

15 “(C) PAYDAY LOAN.—The term ‘payday  
16 loan’ means means a transaction in which cred-  
17 it is extended by a payday lender, for a speci-  
18 fied period of time, upon receipt by the lender  
19 of—

20 “(i) a check made by the borrower for  
21 the amount of the credit extended, the pre-  
22 sentment or negotiation of which, by mu-  
23 tual agreement of the lender and borrower,  
24 will be deferred for such specified period;  
25 or

1 “(ii) authorization from the borrower  
 2 for the payday lender to initiate an elec-  
 3 tronic fund transfer at the end of the spec-  
 4 ified period from the account of the bor-  
 5 rower for the amount of the credit ex-  
 6 tended.”.

7 **SEC. 7. FAIR TREATMENT OF EMPLOYEE BENEFITS.**

8 (a) DEFINITION OF CLAIM.—Section 101(5) of title  
 9 11, United States Code, is amended—

10 (1) in subparagraph (A), by striking “or” at  
 11 the end;

12 (2) in subparagraph (B), by inserting “or”  
 13 after the semicolon; and

14 (3) by adding at the end the following:

15 “(C) right or interest in equity securities  
 16 of the debtor, or an affiliate of the debtor, held  
 17 in a pension plan (within the meaning of sec-  
 18 tion 3(2) of the Employee Retirement Income  
 19 Security Act of 1974 (29 U.S.C. 1002(2))) for  
 20 the benefit of an individual who is not an offi-  
 21 cer or director of the debtor, if such securities  
 22 were attributable to—

23 “(i) employer contributions by the  
 24 debtor or an affiliate of the debtor other  
 25 than elective deferrals (within the meaning

1 of section 402(g) of the Internal Revenue  
2 Code of 1986), and any earnings thereon;  
3 and

4 “(ii) elective deferrals (and any earn-  
5 ings thereon) that are required to be in-  
6 vested in such securities under the terms  
7 of the plan or at the direction of a person  
8 other than the individual or any bene-  
9 ficiary,

10 except that this subparagraph shall not apply to  
11 any such securities during any period during  
12 which the individual or any beneficiary has the  
13 right to direct the plan to divest such securities  
14 and to reinvest an equivalent amount in other  
15 investment options of the plan;”.

16 (b) PRIORITIES.—Section 507(a)(4) of title 11,  
17 United States Code, is amended—

18 (1) in subparagraph (B), by indenting the left  
19 margin of clauses (i) and (ii) 2 ems to the right and  
20 redesignating such clauses as subclauses (I) and  
21 (II), respectively;

22 (2) by indenting the left margin of subpara-  
23 graphs (A) and (B) 2 ems to the right and redesign-  
24 ating such subparagraphs as clauses (i) and (ii),  
25 respectively;

(3) in the matter preceding clause (i), as so re-designated, by striking “Fourth” and all that follows through “plan—” and inserting the following: “Fourth—

“(A) allowed unsecured claims for contributions to an employee benefit plan—”.

(4) by striking the period at the end and inserting the following: “or”; and

(5) by adding at the end the following:

“(B) allowed unsecured claims with respect to rights or interests in equity securities of the debtor, or an affiliate of the debtor, that are held in a pension plan (within the meaning of section 3(2) of the Employee Retirement Income Security Act of 1974), without regard to when services were rendered or limitation in amount, and measured by the market value of the stock at the time the stock was contributed to, or purchased by, the plan.”.

**SEC. 8. WAGE PRIORITY AND EMPLOYEE BENEFIT CAP.**

Section 507(a) of title 11, United States Code, is amended—

(1) in paragraph (3), by striking “\$4,000” and inserting “\$13,500”; and

1           (2) in paragraph (4)(B)(i), by striking  
2       “\$4,000” and inserting “\$13,500”.

3 **SEC. 9. SUBORDINATION.**

4       Section 510(b) of title 11, United States Code, is  
5 amended by inserting “, other than a claim described in  
6 section 105(5)(C).” after “claim” the 1st place it appears.

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